

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

STAR NEWS DIGITAL MEDIA, INC.,
MICHAEL PATRICK LEAHY, and
MATTHEW D. KITTLE,

Plaintiffs,

v.

FEDERAL BUREAU OF
INVESTIGATION,

Defendant.

Civil Action No. 3:23-cv-00467-AAT

**DEFENDANT'S RESPONSE TO PLAINTIFFS' STATEMENT OF
UNDISPUTED MATERIAL FACTS**

Pursuant to Local Civil Rule 56.01(c), Defendant Federal Bureau of Investigation (“FBI”) respectfully submits the following response to Plaintiffs’ statement of undisputed material facts in opposition to Plaintiffs’ motion for summary judgment.

1. Plaintiff Star News Digital Media, Inc. is a media and news company that owns and operates The Star News Network family of digital newspapers and Star News Radio. The company’s headquarters are in Nashville, Tennessee. Dkt 1:¶8.

RESPONSE: Admit but deny that the underlying facts are material to the resolution of this matter.

2. Plaintiff Michael Patrick Leahy is the CEO, Editor-in-Chief, and majority owner of Star News Digital Media, Inc., which owns and operates a family of state-focused conservative news sites, including The Tennessee Star, The Ohio Star, The Michigan Star, The Minnesota Sun, The Virginia Star, The Georgia Star News, The Arizona Sun Times, The Florida Capital Star, The Wisconsin Daily Star, The Pennsylvania Daily Star, The Connecticut Star, and The Star News

Network. He is also the host of The Tennessee Star Report with Michael Patrick Leahy. Leahy is a resident of Thompsons Station, Tennessee. Dkt. 1:¶9.

RESPONSE: Admit but deny that the underlying facts are material to the resolution of this matter.

3. Plaintiff Matthew D. Kittle is an award-winning investigative reporter and 30-year veteran of print, broadcast, and online journalism. Kittle is The Star News Network's National Political Editor. He has written for The Tennessee Star about matters related to the March 27 shooting in Nashville and plans to report on the motivations of the shooting and the FBI's response and delay in releasing the manifesto. Kittle is a resident of West Des Moines, Iowa. Dkt. 1:¶10.

RESPONSE: Admit but deny that the underlying facts are material to the resolution of this matter.

4. Defendant FBI is an agency of the United States within the Department of Justice. Dkt. 1:¶11.

RESPONSE: Admit.

5. On March 27, 2023, a shooter entered The Covenant School in Nashville and tragically killed three nine-year-old students and three adults—an administrator, a substitute teacher, and a custodian. Law enforcement officers bravely entered the building and killed the shooter, later identified as 28-year-old Audrey Hale. To this day, Hale's motives remain unknown to the public. Dkt. 1:¶1.

RESPONSE: Admit the first two sentences but deny that the underlying facts are material to the resolution of this matter. Admit that Hale's motives remain unknown to all members of the public but deny that that fact is material to the resolution of this matter.

6. On March 27, 2023, Metropolitan Nashville Police Chief John Drake did not give a specific motive for the attack, but said “we have a manifesto, we have some writings that we’re going over that pertain to this date, the actual incident.” *See* Jonathan Mattise, Nashville shooter who drew maps, surveilled school, Associated Press, March 27, 2023, <https://archive.ph/RhFoo>. Dkt. 1:¶2.

RESPONSE: Admit.

7. Within two days of the March 27 attack (and perhaps sooner), FBI came in possession of records that have been described as the “manifesto” by law enforcement officials. This document is believed to contain Hale’s notes, journal entries, plans, letters, writings, or other documents related to the March 27 attack and describing her motivations. Dkt. 1:¶3, 16.

RESPONSE: Admit.

8. On April 20, 2023, Plaintiffs requested a copy of the manifesto from FBI under the Freedom of Information Act, stating as follows: “This is a request under the Freedom of Information Act. I am requesting a copy of the following document: Audrey Hale Manifesto related to the Nashville Covenant School Shooting on March 27, 2023. The record came into FBI’s possession on or about that date. Media reports indicate that the report is in the possession of the FBI, specifically the Behavioral Analysis Unit. The purpose of my request is not for commercial use, but as a member of the news media. I am a reporter employed by Star News Digital Media, Inc. I have been reporting on the events related to the shooting for The Tennessee Star. The Manifesto is alleged to reveal the motivations of Audrey Hale. These motivations are not only relevant to my reporting, but important for public safety and therefore of intense national media interest. The release of these documents could not possibly interfere with any pending law enforcement proceedings, especially since the killer is deceased and the threat to the public has

abated. I am willing to pay the fees related to obtaining this document.” A true and accurate copy of this request is attached as Exhibit 1 to the Verified Complaint. Dkt. 1:¶14.

RESPONSE: Admit.

9. On April 24, 2023, FBI denied the request to expedite, stating that Plaintiffs had “not provided enough information concerning the statutory requirements permitting expedition.” A true and accurate copy of this decision is attached to the Verified Complaint as Exhibit 2. Dkt. 1:¶15.

RESPONSE: Admit.

10. On April 24, 2023, Plaintiffs sent a clarifying request to FBI providing a basis to expedite the request, clarifying that the request was on behalf of all Plaintiffs, and further explaining as follows: “I am requesting a copy of the following records: the notes, journal entries, plans, letters, writings, or other documents making up what law enforcement officials have labeled as Audrey Hale’s ‘manifesto’ related to the Nashville Covenant School Shooting on March 27, 2023.” A true and accurate copy of this clarification is attached to the Verified Complaint as Exhibit 3. Dkt. 1:¶16.

RESPONSE: Admit.

11. On April 25, 2023, FBI denied Plaintiffs’ request. FBI’s response gave the following reason: “5 U.S.C. § 552(b)(7)(A) exempts from disclosure: records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information … could reasonably be expected to interfere with enforcement proceedings.” FBI further stated, “The records responsive to your request are law enforcement records; there is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information could reasonably be expected to interfere with enforcement

proceedings. Therefore, your request is being administratively closed.” A true and accurate copy of FBI’s denial is attached to the Verified Complaint as Exhibit 4. Dkt. 1:¶17.

RESPONSE: Admit.

12. On April 25, Plaintiffs filed an administrative appeal with the Department of Justice Office of Information Policy. In this appeal, Plaintiffs argued that FBI had no basis to withhold the manifesto under 5 U.S.C. § 552(b)(7)(A) because production of the manifesto would not “reasonably be expected to interfere with enforcement proceedings.” A true and accurate copy of Plaintiffs’ administrative appeal is attached to the Verified Complaint as Exhibit 5. Dkt. 1:¶18.

RESPONSE: Admit.

13. On or about April 27, 2023, MNPD’s Public Information Office stated: “The investigation has advanced to the point that the writings from the Covenant shooter are being reviewed for public release. That process is underway and will take a little while.” See Michael Ruiz, Nashville police to release manifesto in Christian school shooting massacre, Fox News, April 27, 2023, <https://archive.ph/o8eDD>. Dkt. 1:¶20.

RESPONSE: Admit that the cited article contains this reporting but deny that the underlying facts are material to the resolution of this matter.

14. On May 3, MNPD stated that it would not release the manifesto but did not cite any interference with “enforcement proceedings.” Instead, MNPD announced on Twitter, “Covenant investigation update: Due to pending litigation filed this week, the Metropolitan Nashville Police Department has been advised by counsel to hold in abeyance the release of records related to the shooting at The Covenant School pending orders or direction of the court.” Twitter, @MNPDNashville, May 3, 2023, <https://archive.ph/a0IKk>. MNPD was referring to a pending

lawsuit filed in state court. *See Hammond v. Metro. Gov't of Nashville & Davidson Cnty.*, No. 23-542-III (Nashville Ch. Ct., May 1, 2023). Dkt. 1:¶21.

RESPONSE: Admit that the cited tweet contains these statements but deny that the underlying facts are material to the resolution of this matter.

15. On May 5, 2023, the Department of Justice Office of Information Policy denied Plaintiffs' appeal, stating that releasing the manifesto is "reasonably foreseeable" to "harm the interests protected by [5 U.S.C. § 552(b)(7)(A)]." The letter further provided that "FOIA permits you to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B)." A true and accurate copy of this decision by the Department of Justice Office of Information Policy is attached to the Verified Complaint as Exhibit 6. Dkt. 1:¶19.

RESPONSE: Admit.

16. Hale is dead and no threat remains to the public related to the events of March 27. Dkt. 1:¶6.

RESPONSE: Admit that Hale is dead. Deny that no threat remains to the public related to the events of March 27, in light of: (1) the MNPD's ongoing investigation to determine "if related crimes were committed, are being planned, or whether other people were involved," and whether the assailant "had any assistance with planning the shooting or any assistance with purchase the weapons that were used in the shooting," Gibson Decl. ¶¶ 8-9; (2) the FBI's ongoing investigation "to determine if any federal criminal laws were violated, that potentially could include whether underlying bias provided motivation, or if any co-conspirators or like-minded contacts were involved," Seidel Decl. ¶ 28.

17. In the most recent mass shootings involving FBI, manifestos were released to the press sometimes within hours of the attack. On October 24, 2022, Orlando Harris killed two and

injured seven people in St. Louis. FBI investigated the incident with other law enforcement authorities. The very next day, October 25, CNN obtained a copy of and reported on the details of his manifesto. *See* Holly Yan, St. Louis school shooter had an AR-15-style rifle, 600 rounds of ammo and a note saying ‘I don’t have any friends. I don’t have any family,’ police say, CNN.com, Oct. 25, 2022, <https://archive.ph/DDdqw>. On November 22, 2022, Andre Marcus Bing killed seven people and injured four at a Walmart Supercenter in Chesapeake, Virginia. FBI investigated the incident with other law enforcement authorities. Within three days, the New York Times obtained the killer’s manifesto. *See* J. David Goodman, “Walmart Gunman Bought Pistol Hours Before Killing and Left a ‘Death Note,’” New York Times, Nov. 25, 2022, <https://archive.ph/MmfAx>. On February 13, 2023, Anthony Dwayne McRae killed five and injured three on the campus of Michigan State University. FBI and Michigan law enforcement authorities jointly investigated the incident. Approximately three weeks after the shooting, the Detroit News received a two-page handwritten manifesto describing his motives through a FOIA request. *See* Kim Kozlowski, “Note written by MSU shooter asked ‘why,’ outlined other targets,” The Detroit News, March 10, 2023, <https://archive.ph/0bMd6>. Dkt. 1:¶¶23–25.

RESPONSE: Deny that any of the cited articles establish that “[i]n the most recent mass shootings involving FBI, manifestos were released to the press sometimes within hours of the attack.” None of the cited articles describe investigations conducted by the FBI. Specifically: Deny that the article Holly Yan, *St. Louis school shooter had an AR-15-style rifle, 600 rounds of ammo and a note saying ‘I don’t have any friends. I don’t have any family,’ police say*, CNN, Oct. 25, 2022, <https://archive.ph/DDdqw>, establishes that the FBI investigated the incident. That article describes only statements made by “St. Louis police.” Otherwise admit that the cited article contains the stated reporting but deny that the underlying facts are material to the resolution of this

matter. Deny that the article J. David Goodman, *Walmart Gunman Bought Pistol Hours Before Killing and Left a ‘Death Note,’* NEW YORK TIMES, Nov. 25, 2022, <https://archive.ph/MmfAx>, establishes that the FBI investigated the incident. That article describes statements made by “Chesapeake City officials,” and the investigation by local police. Otherwise admit that the cited article contains the stated reporting but deny that the underlying facts are material to the resolution of this matter. Deny that the article Kim Kozlowski, *Note written by MSU shooter asked ‘why,’ outlined other targets,* THE DETROIT NEWS, March 10, 2023, <https://archive.ph/0bMd6>, establishes that the FBI investigated the incident or that the “manifesto” at issue was obtained from a federal FOIA request. That article states that the shooter’s note was “redacted in part by MSU police,” indicating it was not obtained through a federal FOIA request, and does not describe any federal investigation conducted by the FBI. Otherwise admit that the cited article contains the stated reporting but deny that the underlying facts are material to the resolution of this matter.

18. FBI itself is proud of its history of releasing manifestos. In 1995, FBI famously released Ted Kaczynski’s manifesto to The Washington Post, The New York Times, and Penthouse magazine. FBI brags about this history on its website. See FBI, Unabomber Bomb Shrapnel, <https://www.fbi.gov/history/artifacts/unabomber-bombshrapnel>. Dkt. 1:¶26.

RESPONSE: Admit that the FBI and the United States Department of Justice approved the publication of Ted Kaczynski’s manifesto in The Washington Post, The New York Times, and Penthouse magazine. Admit that the FBI recites this history on its website. Deny that the cited website establishes either that the “FBI … is proud of its history of releasing manifestos” or that the “FBI brags about this history.” Further deny that the underlying facts are material to the resolution of this matter.

Dated: July 3, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2023, a copy of the foregoing was filed electronically. A copy will be sent to the following, if registered, by operation of the Court's electronic filing system. If not registered, a copy was sent by United States First Class Mail, postage prepaid, to the following:

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